

August 26, 2013

Lacey Keys
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Re: Your Request for Advice
Our File No. A-13-115

Dear Ms. Keys:

This letter responds to your request for advice regarding the mass-mailing provisions of the Political Reform Act (the “Act”).¹

QUESTION

May a Senator elected in 2010 in an even-numbered district, some portion of which overlaps with a newly drawn odd-numbered district, send mass mailings under the “town hall meeting” exception to constituents who reside in the overlapping, or accelerated, area during the 2013-2014 legislative session.

CONCLUSION

The 2010 Senator may send mass mailings under the “town hall meeting” exception to persons residing or doing business in the Senator’s current senatorial district, including the accelerated areas, until the completion of his or her term.

FACTS

You indicate that it is common practice for some state senators to hold public meetings in their districts to meet with constituents and discuss legislative issues, including the need for legislation, pending legislation and the effects of recently adopted legislation. In order to notify

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

constituents about these meetings, senators send “town hall meeting” announcements by mail pursuant to Regulation 18901(b)(9)(A)(1).

Accelerated Areas: Redistricting has raised the question of who qualifies as an incumbent senator’s constituents for purposes of the “town hall meeting” announcement exception in areas where two senate districts temporarily overlap because of redistricting, commonly referred to as “accelerated areas.” Accelerated areas are created because of the decennial redistricting of the Senate, the 40 members of which are elected to “staggered” four-year terms – that is, 20 are elected every two years. At the first election after redistricting, only 20 seats in the Senate are up for election and, therefore, only 20 of the newly drawn districts go into effect. The other 20 members of the Senate continue serving the last two years of their terms in the districts that existed before the most recent redistricting. That is, for two years after redistricting, the 40 Senate districts are comprised of 20 newly drawn districts and 20 previously drawn districts.

As a result of this arrangement, during the two-year period between the first two general elections after each redistricting, there are several geographic areas of the state in which two senate districts overlap, which are referred to as accelerated areas. In each of those areas, the residents are concurrently represented by two incumbent senators – a senator elected in a newly drawn district and a senator finishing the last two years of his or her term in a previously drawn district (see *Legislature v. Reinecke* (1973) 10 Cal.3d 396, 405).

For purposes of the 2011 redistricting that followed the 2010 decennial census, only the Senate seats in odd-numbered districts were up for election at the 2012 general election and, therefore, only odd-numbered districts are currently reflective of the 2011 redistricting. Senators in even-numbered districts, elected in 2010, are continuing to serve in districts as drawn after the 2000 decennial census. Thus, constituents currently residing in accelerated areas reside, simultaneously, in a newly drawn odd-numbered district and a previously drawn even-numbered district. Those voters elected the incumbent senator in the even-numbered district in 2010 and elected the incumbent senator in the odd-numbered district in 2012. The incumbent senator in the even-numbered district will continue to be an elected representative of those constituents until his or her term expires in 2014.

In light of the foregoing, the question you pose is whether a senator elected in 2010 in an even-numbered district, some portion of which overlaps with a newly drawn odd-numbered district, may send mass mailings under the “town hall meeting” exception to constituents who reside in the overlapping, or accelerated, area during the 2013-2014 legislative session. As we previously discussed by phone, Legislative Counsel has provided the Senate Rules Committee with a written opinion that a senator elected in 2010 continues to represent the district from which he or she was elected.

Some senators have small accelerated areas in the districts to which they were elected. For other senators the accelerated areas constitute a large portion or the entire district to which they were originally elected. In these circumstances, if a senator is not permitted to send town

hall meeting announcements to constituents in the accelerated areas he or she may be precluded from sending town hall meeting announcements at all until after the next election in 2014. The Senate Mail Program has received several requests from incumbent senators to send town hall meeting announcements to accelerated areas and wishes to clarify whether an incumbent senator who was elected in 2010 may send such an announcement to the constituents who originally elected him or her under the exception in Regulation 18901(b)(9)(A)(1).

ANALYSIS

Section 89001 provides: “No newsletter or other mass mailing shall be sent at public expense.” Regulation 18901 clarifies which mailings are prohibited under Section 89001. Regulation 18901(a) provides that a mailing is prohibited only if all of the following apply:

“(1) Any item sent is delivered, by any means, to the recipient at his or her residence, place of employment or business, or post office box. For purposes of this subdivision (a)(1), the item delivered to the recipient must be a tangible item, such as a videotape, record, or button, or a written document.

“(2) The item sent either:

“(A) Features an elected officer affiliated with the agency which produces or sends the mailing, or

“(B) Includes the name, office, photograph, or other reference to an elected officer affiliated with the agency which produces or sends the mailing, and is prepared or sent in cooperation, consultation, coordination, or concert with the elected officer.

“(3)(A) Any of the costs of distribution is paid for with public moneys; or (B) Costs of design, production, and printing exceeding \$50.00 are paid with public moneys, and the design, production, or printing is done with the intent of sending the item other than as permitted by this regulation.

“(4) More than two hundred substantially similar items are sent, in a single calendar month, excluding any item sent in response to an unsolicited request and any item described in subdivision (b).”

Regulation 18901(b) contains several exceptions to the general rule in subdivision (a), the most pertinent of which is the “town hall meeting” exception in subdivision (b)(9)1. This exception provides that the 200-piece mailing limit in subdivision (a) does not apply to “An announcement sent to an elected officer’s constituents concerning a public meeting which is directly related to the elected officer’s incumbent governmental duties, which is to be held by the elected officer, and which the elected officer intends to attend.”

For purposes of your request for advice, you asked us to assume the following:

- The public meeting announcements prepared by the Senate Mail Program will be delivered to recipients at their homes, places of employment or business, or post office boxes; they feature the senator hosting the event; they are paid for with public funds; and more than 200 will be sent in a calendar month. (Regulation 18091(a)(1).)
- The announcements prepared by the Senate Mail Program will concern a public meeting directly related to the senator's incumbent governmental duties, the meeting will be held by the senator and the senator will plan to attend the event.

In light of the foregoing facts and assumptions, you ask whether a senator elected in 2010 in an even-numbered district, some portion of which overlaps with a newly drawn odd-numbered district, may send mass mailings under the "town hall meeting" exception to constituents who reside in the overlapping, or accelerated, area during the 2013-2014 legislative session.

The stated rule with respect to the mass mailing prohibition in Regulation 18901 in the context of reapportionment was set forth in the *Milman* Advice Letter, No. I-91-567. In *Milman* we advised that persons residing or doing business in an Assembly member's district as it existed prior to reapportionment continued to be the Assembly member's constituents for purposes of the exception in Regulation 18901(b)(9)(A)(1) until the next election. In addition, during the interim period after reapportionment and before the next election, we advised that residents in geographic territory which has been shifted to the district for which the Assembly member qualifies as an incumbent under Elections Code Section 10212 are also the Assembly member's constituents. We applied the same rule with respect to Board of Equalization elections after reapportionment. (See *Thiella* Advice Letter, No. A-92-659; *King* Advice Letter, No. A-93-244.)

In the *Thiella* letter we stated:

"Case authority provides that where an elected official's district has been redistricted but the official leaves office prior to the next election, the voters that initially elected the official would vote to fill the office in the special election. The new district would be applicable only after the next general election. (*Sloan v. Donoghue* (1942) 20 C.2d 607; *Legislature v. Reinecke* (1973) 10 C.3d 396.) Based on this authority it is appropriate that for purposes of this exception, the members of the board may treat the electors that voted them into office in the old districts as their 'constituents.' Additionally, in order to avoid confusion, some case authority concludes that residents in geographic territory which has been shifted to the member's former districts may also be considered 'constituents.' (*Friends of Assemblywoman La Follette v. Superior Court* (1982) 134 Cal.App.3d 832.) Thus, it is appropriate that at this time members may treat persons in the area encompassed by the new districts as constituents."

The question you raise with respect to senators is factually different from the facts applicable to Assembly and the Board of Equalization elections. You note that the senators are elected by staggered terms. Consequently, reapportionment in the context of the Senate is more complicated and under the stated rule, could result in “constituents” having two senators for which they voted during the two-year overlap period. Stated another way, an incumbent senator could possibly lose a large number of his or her “constituents” in the middle of the term.

In two advice letters (*Hodson* Advice Letter, No. I-92-623; *Johannessen* Advice Letter, No. A-93-474), while not explicitly considering the staggered nature of the elections, we did apply the *Milman* rule to Senate elections. In the *Johannessen* letter we stated:

“For the purpose of these permitted mailings, and until *your next Senatorial election*, your constituents are: (1) persons residing or doing business in your current senatorial district; and (2) persons residing or doing business in the areas for which, under the Elections Code Section 10212, you are considered the incumbent.” [Emphasis added.]

After review of the prior letters and your facts, we reaffirm the advice in the *Hodson* and *Johannessen* with respect to the mass mailing exception for constituent mailings. In theory, persons in the accelerated areas who vote for a new senator in 2012 are no longer “constituents” of the 2010 senatorial incumbent. On the other hand, the vote for a new 2012 senator does not negate the fact that two years prior the same voters voted for the 2010 incumbent to serve a four-year term as their senator. Thus, it appears to be more reasonable to apply the *Milman* rule in this setting and allow the 2010 incumbent to treat persons in the accelerated areas as constituents until the end of the term for which the senator was elected.

Consequently, for the purpose of the exception and until the senator’s next election, his or her constituents are: (1) persons residing or doing business in your current senatorial district; and (2) persons residing or doing business in the accelerated areas.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Zackery P. Morazzini
General Counsel

By: John W. Wallace
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